

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAMEIKA L. BUTLER,

Plaintiff,

- v. -

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER

18 Civ. 5293 (PGG) (SN)

PAUL G. GARDEPHE, U.S.D.J.:

Plaintiff Shameika Butler filed the Complaint in this action on June 12, 2018. (Cmplt. (Dkt. No. 2)) Butler seeks judicial review, pursuant to 42 U.S.C. § 405(g), of a final decision of the Commissioner of Social Security denying her application for Supplemental Security Income (“SSI”) benefits. (*Id.*) On June 25, 2018, this Court referred the case to Magistrate Judge Sarah Netburn for a Report and Recommendation (“R & R”). (*See* Order of Reference (Dkt. No. 7))

On December 6, 2018, Plaintiff filed a motion for judgment on the pleadings arguing, *inter alia*, that Plaintiff did not knowingly and voluntarily waive her right to counsel, and that the administrative law judge (“ALJ”) “failed to perform a full and fair development and evaluation of the evidence; failed to make findings rationally supported by the probative evidence; ignored important evidence; misinterpreted, misapplied[,] and failed to follow Social Security regulations and rulings; and failed to consider pertinent provisions of the law.” (Mot. (Dkt. No. 14); Pltf. Br. (Dkt. No. 15) at 9-12, 18)

On March 11, 2019, Defendant filed a cross-motion for judgment on the pleadings. (Mot. (Dkt. No. 18))

On August 14, 2019, Judge Netburn issued a 24-page R & R, recommending that this Court deny Plaintiff's motion for judgment on the pleadings and grant Defendant's cross-motion for judgment on the pleadings. (R & R (Dkt. No. 20))

In her R & R, Judge Netburn notified the parties that they had fourteen days from service of the R & R to file any objections, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. (R & R (Dkt. No. 20) at 24) The R & R further states that "[t]he failure to file . . . timely objections will result in waiver of those objections for purposes of appeal." (Id.) Neither party has filed objections to the R & R.

In reviewing a report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). When a timely objection has been made to the magistrate judge's recommendations, the district court judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Id.

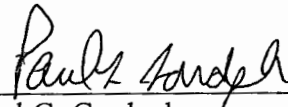
Where, as here, no objections are filed to a magistrate judge's R & R – despite clear warning that a failure to file objections will result in a waiver of judicial review – judicial review has been waived. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); see also Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." (citing Small v. Sec'y of Health and Human Servs., 892 F.2d 15, 16 (2d Cir. 1989) (per curiam))); Spence v. Superintendent, Great Meadow Correctional Facility, 219 F.3d 162, 174 (2d Cir. 2000) ("Failure to timely object to a report generally waives any further judicial review of the findings contained

in the report.”).

This Court has nonetheless reviewed Judge Netburn’s comprehensive and well-reasoned R & R and is satisfied that “there is no clear error on the face of the record.” Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). Accordingly, this Court adopts Judge Netburn’s R & R in its entirety. Plaintiff’s motion for judgment on the pleadings is denied, and Defendant’s cross-motion for judgment on the pleadings is granted. The Clerk of the Court is respectfully directed to terminate the motions (Dkt. Nos. 14, 18) and to close this case.

Dated: New York, New York
September 17, 2019

SO ORDERED.

A handwritten signature in cursive script, appearing to read "Paul G. Gardephe", is written over a horizontal line.

Paul G. Gardephe
United States District Judge